United Nations A/C.6/58/SR.3

General Assembly
Fifty-eighth session

Official Records

Distr.: General
16 October 2003

Original: English

Sixth Committee

Summary record of the 3rd meeting
Held at Headquarters, New York, on Monday, 6 October 2003, at 3 p.m.

Chairman: Mr. Baja ..... (Philippines)

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03-54280 (E)

The meeting was called to order at 3.05 p.m.

Agenda item 151: Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session (*continued*) (A/58/17)

1. **Mr. Akinsanya** (Nigeria) said that the United Nations Commission on International Trade Law (UNCITRAL) had consistently fulfilled its mandate and lived up to the international community's expectations.

2. His delegation welcomed the Commission's adoption of the draft Model Legislative Provisions on Privately Financed Infrastructure Projects; together with the UNCITRAL *Legislative Guide on Privately Financed Infrastructure Projects*, those provisions would facilitate the creation and implementation of a favourable legislative framework for private participation in infrastructure development, particularly in developing countries, and would supplement the Secretary-General's Global Compact initiative. He endorsed the view that the recommendations contained in the Model Legislative Provisions and the *Legislative Guide* should not supplant national legislation or impinge upon national sovereignty; rather, they should serve as a guide for domestic legislation in order to guarantee fairness, transparency and effectiveness. In that regard, Nigeria had established an investment regime which protected foreign investors by guaranteeing stability and investment promotion and protection while ensuring respect for environmental standards and monitoring project performance.

3. He thanked States which had contributed to the UNCITRAL trust fund for symposiums and the trust fund for travel assistance to developing countries that were members of the Commission. However, only one of the nine training sessions and briefings of the past year had been held in Africa; he hoped that that imbalance would be corrected in the future and, to that end, he joined the Chairman of the Commission and the Legal Counsel in calling for the provision of adequate human and financial resources to meet the Commission's increasing responsibilities.

4. He urged Working Group IV (Electronic Commerce) to promote strengthened legislation on the formulation of contracts since some developing countries had expressed uncertainty concerning computer-generated messages of offer and acceptance. He shared the Commission's apprehension regarding the development of a precise definition of commercial fraud and supported the proposal to hold a colloquium on that topic in 2004. He supported the Commission's cooperation with international and regional bodies with similar interests, provided that its independence was not compromised, and welcomed the enlargement of its membership from 36 to 60, which reflected the need for equitable geographical representation and the representation of various legal traditions.

5. It was imperative for States to review their farm subsidy policies and related trade practices, which undermined the Commission's work; negatively affected the economies of developing countries, particularly in sub-Saharan Africa; and had contributed to the failure of the Fifth Ministerial Conference of the World Trade Organization (WTO) in Cancun. The Commission might wish to study the impact of those policies on international commercial transactions.

6. **Ms. Mohamed** (Kenya) said that the Commission was the most appropriate forum for future work in the field of commercial law in the context of globalization; the importance of removing obstacles to the flow of trade, created in part by differences in national legal systems, could not be overstated. Developing countries, especially in Africa, required assistance in bridging the technological divide in the area of electronic commerce.

7. As a member of the Commission, Kenya had participated actively in the work of its thirty-sixth session and was satisfied with the progress achieved. In particular, she applauded the transparent, inclusive manner in which the draft legislative guide on insolvency law had been developed and hoped that future deliberations would refine the draft without derogating from its key objectives.

8. In 2001, Kenya had embarked on a comprehensive reform of its public procurement system. She therefore welcomed efforts to streamline the UNCITRAL Model Law on Procurement of Goods, Construction and Services and supported the proposal that procurement law should be included in the Commission's future work programme.

9. She also welcomed the increase in the Commission's membership, which would give its work greater acceptance by the international community, and urged that more resources should be allocated to promoting awareness and implementation of international trade law conventions; the developing and

least developed countries and countries with economies in transition lacked expertise in areas covered by the Commission's work. Kenya had been both a contributor to and a beneficiary of the trust fund for travel assistance to developing countries; if those countries did not participate, their voices could not be heard. She also welcomed the Secretariat's progress in developing the digest on the Model Arbitration Law and hoped that similar efforts would be made in other areas of model legislation.

10. **Mr. Florent** (France) congratulated the Commission on the achievements of its thirty-sixth session; in particular, the adoption of the draft Model Legislative Provisions on Privately Financed Infrastructure Projects represented a fair compromise between common law and civil law and would promote the development of partnerships between the public and private sectors. The enlargement of the Commission's membership was a sign of the increasing importance which the international community attached to its work.

11. The Commission had a great influence on the development of international trade law, which provided the legal framework for economic globalization; as a forum for debate between the various legal traditions, it functioned as a multilateral legal body. The Commission's workload and the number of its working groups had doubled; his delegation therefore supported the Office of Legal Affairs proposal to provide it with additional resources by redeploying existing funds.

12. While it was useful for the Commission to exchange information with the international financial institutions, the establishment of an official link with those institutions would undermine developing countries' confidence in the Commission's impartiality and should be avoided. His Government was a contributor to the trust fund for symposiums and welcomed the Commission's increasing focus on training and technical assistance. The additional resources allocated to the Commission should allow it to make greater use of independent experts rather than those of professional organizations, who were naturally inclined to defend the interests which they represented.

13. Lastly, he stressed the need to ensure translation and interpretation into the working languages of the Organization so that the francophone delegations could participate actively in the Commission's highly technical activities.

14. **Mr. Ascencio** (Mexico) said that his delegation welcomed the Commission's adoption of the draft UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects, which would be a useful tool for States in developing more efficient procedures for managing infrastructure and public service projects with transparency, equity and continuity. The Model Legislative Provisions should facilitate a balanced regime that would protect the public interest while encouraging private investment, in part by providing legal certainty. He looked forward to the consolidated publication of the *Legislative Guide* adopted in 2000 and the new Model Legislative Provisions.

15. His delegation was also pleased with the progress made on the draft UNCITRAL legislative guide on insolvency law and was confident that the final instrument would provide a regime that would help to prevent negative economic repercussions on society and preserve to the maximum the value of the assets of the company in crisis. The recommendations of the draft legislative guide would promote the establishment of predictable, equitable and transparent insolvency regimes that provided incentives for debtors and creditors to take the best decisions and thus increase the efficiency of the productive system. Legislation should also, where possible, encourage private restructuring agreements. His delegation agreed on the importance of collaboration between Working Group V (Insolvency Law) and Working Group VI (Security Interests), to ensure consistent treatment of those related topics.

16. The work concerning interim measures of protection in support of arbitration was of great importance in ensuring that arbitral awards could be executed. In connection with the proposal to revise the text of article 17 of the UNCITRAL Model Law on International Commercial Arbitration, his delegation supported the realization of the necessary studies and consultations to arrive at a text that would provide for compatibility and uniformity in the proceedings of courts and arbitral tribunals. With regard to the monitoring of the implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), his delegation encouraged the Commission to intensify its efforts to obtain information and promote cooperation in that regard.

17. His delegation supported the expanded survey and consultations required to take a comprehensive approach to legal barriers to electronic commerce. It also thought that an international instrument on electronic contracting would facilitate the use of modern means of communication in cross-border commercial transactions by providing greater legal certainty. Moreover, the use of the Internet for transactions had also revealed legal gaps that needed to be filled in the areas of public procurement and commercial fraud.

18. Since, as the Legal Counsel had explained, the proposal of the Secretary-General to strengthen the UNCITRAL secretariat could be achieved by redeployment within the existing resources of the Office of Legal Affairs, his delegation could support it.

19. His delegation agreed that one of the key tasks of UNCITRAL was to provide assistance to developing countries in using UNCITRAL texts. Mexico had therefore supported the trust fund for travel assistance to developing countries and called upon other countries to contribute to the trust funds.

20. **Mr. Medrek** (Morocco) said his delegation was pleased to note that the past session of UNCITRAL had been very productive. It considered UNCITRAL to be one of the great successes of the United Nations system. The enlargement of the membership of the Commission would increase its effectiveness and strengthen its hand in coordinating with other organizations concerned with international trade law, a function that had assumed greater importance in recent years.

21. The draft UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects recently adopted by the Commission represented a welcome development of its earlier work on the topic. His delegation looked forward to the consolidated publication of the new text together with the earlier *Legislative Guide*, which should avoid confusion and facilitate their use.

22. His delegation also approved of the objectives and main principles of the draft UNCITRAL legislative guide on insolvency law, subject to some minor changes, and considered that the solutions arrived at by Working Group V (Insolvency Law) would be valuable to all States, regardless of their legal tradition or level of economic development.

23. On the subject of arbitration, since it was unlikely that work on all the issues before Working Group II (Arbitration and Conciliation) could be completed by the Commission's next session, priority should be accorded to the question of interim measures of protection. Morocco had also followed the work on electronic commerce, security interests and transport law with great interest and viewed favourably the new topics proposed for possible future work, namely public procurement and commercial fraud.

24. His delegation considered the Commission's training and technical assistance activities to be of great value, particularly for developing countries and countries with economies in transition and in facilitating economic integration efforts. However, additional training and assistance was required to meet the needs of Africa in the areas covered by UNCITRAL. His delegation wished to thank the States and organizations that had contributed to the trust fund for symposiums and the trust for travel assistance to developing countries.

25. The UNCITRAL secretariat was to be congratulated on the improved web site, which provided quick access to the Commission's documents in all official languages.

26. **Mr. Hafrad** (Algeria) welcomed the adoption of the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects, which would be of use, especially to developing countries, in adopting appropriate legislation. Such provisions would foster the transparency, fairness and long-term viability of privately financed infrastructure projects and do away with unwarranted restrictions on private sector participation. Algeria also welcomed the progress UNCITRAL had made in its work on arbitration, insolvency law, electronic commerce, transport law and security interests.

27. His Government was pleased at the broad consensus behind the draft UNCITRAL legislative guide on insolvency law, which set down guidelines in a very complex legal field. The collection and dissemination of case law on UNCITRAL texts (CLOUT) constituted an extremely useful tool in ensuring a uniform interpretation and application of the texts. The Commission's seminars and briefing missions, the mainstay of the training and technical assistance it offered throughout the world, had been

very beneficial to developing countries and countries with economies in transition.

28. **Mr. Nesi** (Italy) said that the Commission's report testified to the extremely important work accomplished by UNCITRAL during its thirty-sixth session. His delegation welcomed the proposals for strengthening and restructuring the UNCITRAL secretariat within the existing resources of the Office of Legal Affairs and hoped that the explanations given at the previous meeting by the Chairman of UNCITRAL and the Legal Counsel would serve to overcome the hesitations of the Advisory Committee on Administrative and Budgetary Questions. His delegation would lend its assistance in consultations in the context of both the Fifth and the Sixth Committees.

29. **Mr. Romeu** (Spain) said that the enlargement of the Commission's membership would undoubtedly benefit its work and ensure broader acceptance of UNCITRAL texts. As an active member of the Commission, his delegation was pleased with the progress made, in particular the adoption of the draft UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects, which promised to shed light in an area where development had been handicapped by a lack of transparency. It was also pleased that work had continued on interim measures of protection in international arbitration and approved of the decision of the Commission, in its work on a draft legislative guide on insolvency law, to coordinate with the World Bank, which was also working in that area, with a view to completing its work the following year. His delegation also favoured the proposals for future work on commercial fraud and on public procurement, since current commercial practices raised questions and challenges not contemplated when the UNCITRAL Model Law on Procurement of Goods, Construction and Services had been adopted in 1994.

30. In recent years developing countries had shown increasing interest in participating in global trade on a solid legal and institutional basis, with a corresponding increase in requests for technical assistance addressed to UNCITRAL, which had not always been able to respond adequately. That was only one example of the problems faced by the UNCITRAL secretariat in handling an increase in activities with insufficient resources. His delegation supported the proposal to restructure the UNCITRAL secretariat and make it a division and regretted that the Advisory Committee on Administrative and Budgetary Questions felt unable to endorse the proposal. It was to be hoped that a solution could be found during the current session of the General Assembly.

31. **Mr. Lavalle-Valdés** (Guatemala) said that the Commission and its secretariat well merited the praise they reaped year after year for their efficiency and their accomplishments in the harmonization and progressive development of international trade law. His delegation was very pleased with the adoption at the Commission's thirty-sixth session of the draft UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects, a topic of great usefulness to all States, particularly those in the Third World. It had also followed with interest the progress in preparing harmonized texts on arbitration agreements. Another major accomplishment of the thirty-sixth session was the preliminary approval of the draft UNCITRAL legislative guide on insolvency law. His delegation was pleased that UNCITRAL planned to coordinate with the World Bank on that topic. It also thought that the work on electronic commerce was of great value and welcomed the progress made by Working Group III (Transport Law) in completing a first reading of the draft instrument on transport law.

32. His delegation supported the proposal to strength the UNCITRAL secretariat and hoped that the difficulties the proposal had encountered could be overcome. Guatemala welcomed the enlargement of the Commission's membership and hoped to become a member.

33. **Mr. Boonpracong** (Thailand) said that, as a developing country, Thailand welcomed the enlargement of the Commission's membership, which ensured the balanced representation of all legal systems and all levels of development. As a member of UNCITRAL, Thailand attached great importance to the harmonization and unification of international trade law, and had recently adopted domestic laws on electronic commerce and arbitration in line with the Commission's recommendations. The commendable system for the collection and dissemination of case law on UNCITRAL texts (CLOUT) offered an avenue for the sharing of information among States.

34. **Mr. Hahn** Myung-jae (Republic of Korea) said that his delegation had participated actively in all the Commission's working groups and had now applied for membership in the Commission. It particularly welcomed the adoption of the UNCITRAL Model

Legislative Provisions on Privately Financed Infrastructure Projects, and the forthcoming completion of the draft UNCITRAL legislative guide on insolvency law. The 1980 United Nations Convention on Contracts for the International Sale of Goods, to which his Government was currently in the process of acceding, was only one example of the Commission's successful harmonization and unification of international trade law. His delegation also believed that every effort should be made to achieve the savings recommended by the Legal Counsel within the Office of Legal Affairs that would allow redeployment of funds to the UNCITRAL secretariat.

35. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) observed that the work of UNCITRAL would be very important in helping his country, after six years of useless war, to begin its development and economic reconstruction. His Government believed that the draft UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects constituted a real advance that would enable States to harmonize their legislation and it welcomed the Commission's decision to combine the Model Provisions and the *UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects* in a single text and to retain all the legislative recommendations. The draft UNCITRAL legislative guide on insolvency law would, when adopted, be equally useful.

36. The Commission's work on electronic commerce had been particularly innovative. His Government supported the preliminary draft of a convention dealing with selected electronic contracting issues, and was convinced that such an instrument would facilitate the use of modern means of communication in cross-border commercial transactions, and help States develop their own insolvency regimes. The most worrisome aspect of electronic commerce, however, for both developing countries and countries with economies in transition, was the fact that they lagged so far behind while information and communication technologies developed dramatically. All such countries needed to develop the basic infrastructure and the political and technical expertise that would enable them to participate effectively and to deal with new issues such as electronic governance and the installation of third-generation mobile communication systems. The Democratic Republic of the Congo urged the industrialized nations to help those countries close the gap by providing the necessary assistance. That would also entail increased assistance to UNCITRAL itself, so that it could hold seminars and briefing missions to promulgate its work and facilitate attendance by representatives of developing countries.

37. **Mr. Wiwen-Nilsson** (Sweden), (Chairman of the United Nations Commission on International Trade Law) said that he had been encouraged by the strong support and satisfaction expressed by delegations with regard to the Commission's work. Since they had also seemed to be unanimous in favouring the increase in UNCITRAL resources proposed by the Legal Counsel, he urged them to speak to their Fifth Committee colleagues in that regard.

38. The active participation of new UNCITRAL members would be invaluable. The Commission's work covered many areas of legal expertise, which related to the work of national ministries other than the Ministries of Justice or Foreign Affairs. It would therefore be very fruitful if all members engaged in wide-ranging ministerial consultations in their own countries.

39. **Mr. Sekolec** (Secretary of United Nations Commission on International Trade Law) referring to the increase in the Commission's membership, said that the various regional groups were preparing lists of candidates for the additional posts and that once they were established, elections would be held at the start of the June 2004 session of UNCITRAL.

40. With its six intergovernmental working groups of the whole and its many projects in diverse areas of international trade law, UNCITRAL made demands on member States. He would be happy to meet with any delegates who wished to be briefed on the Commission's work methods, programme of work or plans for the future.

41. **The Chairman** expressed appreciation for the valuable work being done by UNCITRAL in the harmonization and development of international trade law.

The meeting rose at 4.35 p.m.